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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/047,967

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Jesse John Kiefer

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7590

09/12/2006

ALLEN R. KIPNES

WATOV & KIPNES

P.O. BOX 247

PRINCETON JUNCTION, NJ 08550

EXAMINER

CORBIN, ARTHUR L

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 09/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/047,967

Applicant(s)

KIEFER ET AL.

Examiner

Arthur L. Corbin

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1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-12,14,15,18-28,30,31 and 33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,8,9,11,14,15,18-28,30,31 and 33 is/are rejected.
- 7) ☒ Claim(s) 1,10,12,14,19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 4-6, 8, 9, 11, 14, 15, 18, 19, 21-25, 27, 30, 31 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bell et al (pages 7, 10, 11, 13-15 and claim 25) as set forth in paragraph nos. 5 and 6, Paper No. 051104 and to paragraph no. 6, Paper No. 100504.

3. Claims 3 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bell et al as applied to the claims in paragraph no. 2 above, and further in view of Friello et al or Glass et al as set forth in paragraph no. 7, Paper No. 051104.

4. Claims 26 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bell et al as applied to the claims in paragraph no. 2 above, and further in view of Cherukuri et al (4,352,823; col. 2, lines 24-27 and 45-68; col. 4, lines 37-47 and 68; col. 8, lines 9-11) as set forth in paragraph no. 8, Paper No. 051104.

5. Applicant's arguments filed June 30, 2006 have been fully considered but they are not persuasive. Although the skilled artisan may realize that particle size of the calcium compound is critical, as applicant contends on page 6 of the remarks, there is no factual evidence of record to support a conclusion that an average particle size of less than 17 microns is critical. According to paragraph 13 of applicant's 132 declaration and page 5 of applicant's June 30, 2006 remarks, applicant's conducted research of various particle sizes and found that less than 17 microns was most

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effective. Such research, if made of record in the instant application, may support applicant's conclusion regarding the criticality of the particle size being less than 17 microns. Additionally, how exactly was Stoke's law used to determine that less than 17 microns is the desirable particle size needed to achieve applicant's objectives, as applicant indicates on page 7 of the current remarks?

Applicant's comments about Cherukuri et al are not convincing with respect to applicant's claims 26 and 28 since neither of these claims preclude the presence of gum base in the centerfill portion of the chewing gum composition.

6. Claims 1, 14 and 19 are objected to because of the following informalities: In claim 1: line 3, "and" should be added "base"; line 5, "relatively" should be cancelled and line 7, "a" (2d occurrence) should be cancelled. In claim 14, "wherein" should be added after "1". In claim 19, line 3, "relatively" should be cancelled, and line 8, "a reasonable number" should be cancelled. Appropriate correction is required.

7. Claims 10 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur L. Corbin whose telephone number is (571) 272-1399. The examiner can normally be reached on Monday-Friday from 10:30 AM to 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton I. Cano, can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Arthur L. Corbin  
Primary Examiner  
Art Unit 1761

9-8-06